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CLEARINGHOUSE RULE 98-203

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

1. Statutory Authority

Section DWD 17.04 (1) provides that Department of Workforce Development (DWD) must annually define the required training for each job function, and s. DWD 17.05 (1) provides that DWD must annually define the required ongoing training for each job function. Section 49.143 (2) (c), Stats., provides that DWD must ensure that a financial and employment planner (FEP) employed by a W-2 agency must meet training requirements established by DWD **by rule**. Further, s. 49.33 (3), Stats., provides that DWD must promulgate **rules** establishing, among other things, training requirements for income maintenance (IM) workers. Thus, it appears that the required job training is to be set forth in an administrative rule, rather than bootstrapped by a reference to further department action. [See also s. DWD 17.06 (3).]

2. Form, Style and Placement in Administrative Code

a. With the repeal and recreation of s. DWD 17.05 (3), relating to ongoing training, and the fact that s. DWD 17.04 (4) (b) is limited to permitting local agencies to develop a plan to implement the standardized DWD curriculum only for training new IM workers, local agencies can no longer develop or conduct their own **ongoing** training courses. This significant change should be referred to in the analysis. [See s. 1.02 (2) (b), Manual.]

b. The third paragraph of the analysis indicates that training will either be “supervised directly by DWD” or based on a DWD-approved plan to implement the standardized curriculum.

However, under s. DWD 17.04 (2), DWD may make the training available through contracted agencies. This should be referred to in the analysis.

c. SECTION 1 provides that ch. HSS 217 is renumbered to ch. DWD 17. Most of the following sections of the proposed order then amend or repeal various provisions in ch. DWD 17, without indicating in the treatment clause that they are renumbered. Further, it is inappropriate to renumber and then repeal a provision. Due to the numerous changes in ch. DWD 17, including the many amendments, repeals and creation of new provisions, it would be easier from a drafting standpoint and easier for the readers to comprehend if ch. HSS 217 were repealed and ch. DWD 17 were created in its entirety--without strike-throughs, underlining, repeals, etc.

d. The initial regulatory flexibility analysis indicates in item 2. that “No additional reporting or bookkeeping procedures are created by this rule. Income maintenance agencies will continue to have an obligation to keep records of the training of their employees.” However, as noted by the analysis to the rule, these requirements, which previously applied to county agencies and tribal agencies, are now being applied to W-2 agencies, which may be privately run agencies. Thus, item 2. in the initial regulatory flexibility analysis inappropriately suggests that there are no additional procedures created by the rule that affect small businesses.

e. In s. DWD 17.01 (1) and (2), the titles should be included, even though they are not amended. [See s. 1.05 (3) (c), Manual.] This comment also applies to ss. DWD 17.04 (2) and (5), 17.05 (1), (2), (4) and (6) (intro.) and 17.07.

f. In s. DWD 17.02 (8), “(insert effective date of rule)” should be changed to “the effective date of this subsection [revisor inserts date]”. The entire rule should be reviewed for this problem.

g. It does not appear that a definition of FEP in s. DWD 17.02 (8m) is necessary as it appears that that term is used only in the note to s. DWD 17.02 (12). If this is the case, the definition of FEP could be included in the note to s. DWD 17.02 (12).

h. In SECS. 13 and 15, the amendments to the titles should be shown by use of strike-throughs and underscores. [See s. 1.04 (3) (b), Manual.]

i. Because all of the paragraphs under s. DWD 17.04 (1) are repealed in SECTION 18, the treatment clause in SECTION 17 should provide that “DWD 17.04 (1) (intro.) is renumbered s. DWD 17.04 (1) and amended to read:”. On the following line, “(intro.)” should be deleted, and the title “STANDARDIZED CURRICULUM” should be included. [See s. 1.05 (3) (c), Manual.]

j. Section DWD 17.04 (4) (a) is repealed, thus leaving only one paragraph in s. DWD 17.04 (4). This is inappropriate as at least two subunits are necessary for division. Section DWD 17.04 (4) (b) should be renumbered as s. DWD 17.04 (4) (intro.), and the subdivisions under s. DWD 17.04 (4) (b) should be renumbered as paragraphs. [See s. 1.03 (intro.), Manual.] This means that the title to s. DWD 17.04 (4) (b) “*Training implementation plan*” should be

eliminated. Consideration should be given to including language about the training implementation plan in the recreated title to s. DWD 17.04 (4).

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In the first paragraph of the analysis, the removal of references to the Relief to Needy Indian Persons (RNIP) Program also should be noted.

b. In the third paragraph of the analysis, “based a” should be changed to “based on a.” Also, the phrase “will now either be supervised . . . or must be based . . .” is grammatically incorrect. The phrase “must be” should be deleted so that the phrase reads “will either be supervised . . . or based on a . . .” Alternatively, the phrase could be changed to “must either be supervised . . . or based on a . . .”

c. In s. DWD 17.01 (1), the phrase “county, *tribe* or W-2 agency” (emphasis added) is used. In contrast, most other sections refer to a “county, *tribal* or W-2 agency” (emphasis added). A consistent approach should be used to avoid ambiguity.

In addition, it is noted that “county agency,” “tribal agency” and “W-2 agency” are all defined terms. The defined terms are used separately in s. DWD 17.02 (12) which refers to “a county agency, tribal agency, or W-2 agency.” In contrast, most other sections, such as s. DWD 17.02 (15) refers to a “county, tribal, or W-2 agency.” A consistent approach should be used to avoid ambiguity. In general, use of defined terms helps avoid ambiguity.

Also, the recreated title of s. DWD 17.04 (4) refers to “COUNTY, TRIBAL OR W-2 TRAINING.” It appears that reference to an agency should be included.

d. Section DWD 17.02 (2m) and other sections refer to a “W-2 group member.” Chapter DWD 17 does not define this term. It should be defined, for example, by referring to s. 49.141 (1) (s), Stats.

e. Section DWD 17.02 (10) and other sections refer to “Wisconsin works” or “W-2.” Chapter DWD 17 does not define this term. It should be defined, for example, by providing that it has the meaning given in s. DWD 12.03 (40) or by repeating that definition in ch. DWD 17.

f. The rule should be clarified with respect to “ongoing training” and “refresher training.” Section DWD 17.02 (16) defines “ongoing training” as “refresher training and training in interpersonal skills and case management.” However, the amended definition of “refresher training” in s. DWD 17.02 (18) already specifies that it includes training on interpersonal skills and case management, thus making the definition of “ongoing training” confusing as it then twice refers to training in interpersonal skills and case management.

Moreover, the definition in s. DWD 17.02 (21) of “successful completion of IM training for experienced IM workers” refers to attendance at “refresher, interpersonal, or case management skill courses.” Again, the amended definition of “refresher training” already specifies that it includes training on interpersonal skills and case management, thus making the

definition of “successful completion of IM training for experienced IM workers” confusing as it then twice refers to training in interpersonal skills and case management.

In addition, s. DWD 17.01 (1) provides that DWD must make “refresher training” available for experienced IM workers. However, s. DWD 17.05 indicates that DWD is to develop “ongoing courses,” rather than “refresher training.” These two provisions should be reconciled.

g. In s. DWD 17.02 (18), the word “on” should not be stricken.

h. Amended s. DWD 17.02 (24) defines “tribal agency” as “an agency designated by the elected tribal governing body of a federally-recognized Wisconsin Indian tribe or band to administer W-2, MA, and food stamps.” If it is possible for a tribe to administer some, but not all, of these programs, the last phrase should be changed to “W-2, MA *or* food stamps.” Also, it appears that language should be included about having a contract with the state to administer such programs, rather than suggesting that if the tribal governing body unilaterally makes this designation, then ch. DWD 17 applies.

i. It would be preferable to change the titles of s. DWD 17.03 (1) and (2), respectively, to “IM WORKERS WHO BEGIN EMPLOYMENT ON OR AFTER FEBRUARY 1, 1991 TRAINING REQUIREMENTS FOR NEW IM WORKERS” and “IM WORKERS EMPLOYED BEFORE FEBRUARY 1, 1991, AND OTHER TRAINING REQUIREMENTS FOR EXPERIENCED IM WORKERS.” The terms “new IM worker” and “experienced IM worker” are defined, and it seems unnecessarily duplicative to repeat the dates from those definitions in the titles to these subsections.

j. In s. DWD 17.03 (1), the reference to “new worker” in the first sentence should be changed to the defined term “new IM worker.”

k. Section DWD 17.03 (2) provides that the local agency must ensure that each experienced IM worker completes ongoing training on eligibility determinations and redeterminations “each calendar year” if the worker was an experienced IM worker for the “entire year.” It is unclear when the training requirement applies. Is the “entire year” a calendar year, and, if so, is the training required to be completed by the end of the subsequent calendar year or the same calendar year? (If it is the latter, a determination cannot be made that the person worked the entire year until December 31, at which time it becomes clear that the training requirement applies but it might not be possible to complete any required training.) This should be clarified.

l. Section DWD 17.04 (4) (b) specifies that the implementation plan must be submitted to DWD for approval “at least 45 days before the planned starting date of training, when it is first offered, and annually after that.” The deadline for submission of the subsequent plans is ambiguous. For example, does “annually after that” refer to annually after the starting date of training or annually after the previous submission to DWD? This should be clarified.

m. After amendment, s. DWD 17.04 (4) (b) 1. will read: “Specify the number of hours of classroom training and independent study, and planned exercises and tests.” If the intent is

that only the number of hours with respect to these items be specified in the training implementation plan, then the provision should be changed to read: “Specify the number of hours of classroom training, independent study, planned exercises and tests.”